

REMARKS

The Examiner asserts that the application contains claims directed to more than one species of the generic invention and that the species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. Applicant respectfully traverses.

As the Examiner has stated, this application is subject to the PCT Rules 13.1 to 13.4 (unity of invention). MPEP § 1893.03(d) states: "When making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group." Applicant submits that, while the Examiner states he is using unity of invention, it appears that the restriction is based on U.S. practice under MPEP 800. Applicant notes that the Examiner has cited MPEP § 809.02(a), which does not apply to this application. Also, the Examiner has cited to 37 CFR § 1.141, which is improper. The proper rule is 37 CFR § 1.499. See page 2, the last paragraph of the office action. See MPEP 1893.03(d).

Under PCT Rules 13.1 and 13.2, a group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The MPEP, Appendix AI sets forth the Administrative Instructions under the PCT (see Annex B Unity of Invention Part 1, Instructions Concerning Unity of Invention). Those Instructions explain: "Unity of invention has to be considered in the first place only in relation to the **independent** claims in an international application and not the dependent claims." (Emphasis supplied). If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. **In particular, it does not matter if a dependent claim itself contains a further invention.** Equally, no problem arises in the case of a genus/species situation where the genus claim avoids the prior art. See Annex B, Unity of Invention, Part 1(c)(i).

In this case, the special technical feature is "a plurality of identically acting first surfaces are stacked with a corresponding number of identically acting second surfaces, at least one of the first and second surfaces being operable jointly in operative connection." This special technical feature is found in every claim. In addition, there is only one independent claim. Thus, regardless of whether there are further inventions in the dependent claims, the Examiner's election requirement, which is directed to the dependent claims, is improper. Moreover, the Examiner has not made any attempt to explain how the special technical feature does not define over the prior art.

Applicant respectfully requests reconsideration and also requests that the Examiner withdraw the election requirement.

Applicant provisionally elects claims 1-9 and 11, with traverse. Claims 1-7 are generic claims.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicant's attorneys.

Respectfully submitted,

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